

BEFORE THE
POSTAL REGULATORY COMMISSION
WASHINGTON, D.C. 20268-0001

RETAIL ACCESS OPTIMIZATION INITIATIVE

Docket No. N2011-1

MOTION OF THE UNITED STATES POSTAL SERVICE
TO COMPEL RESPONSES TO INTERROGATORIES DIRECTED TO
PUBLIC REPRESENTATIVE WITNESSES WATERS (USPS-PR-T1-2, 6)
AND KLINGENBERG (USPS/PR-T2-6)

The United States Postal Service hereby moves to compel responses to interrogatories directed to witnesses of the Public Representative. In each instance, counsel for the Public Representative failed to file any objection; rather, each witness undertook objections in what otherwise purported to be responses. Such conduct is contrary to the Commission's Rules of Practice, specifically Rule 26(e), which states:

c) *Objections.* In the interest of expedition, the bases for objection shall be clearly and fully stated. If objection is made to part of an interrogatory, the part shall be specified. **A participant claiming privilege shall identify the specific evidentiary privilege asserted and state the reasons for its applicability. A participant claiming undue burden shall state with particularity the effort that would be required to answer the interrogatory, providing estimates of cost and work hours required, to the extent possible.** An interrogatory otherwise proper is not necessarily objectionable because an answer would involve an opinion or contention that relates to fact or the application of law to fact, but the Commission or presiding officer may order that such an interrogatory need not be answered until a prehearing conference or other later time. Objections shall be filed with the Commission in conformance with §§3001.9 through 3001.12 within 10 days of the filing of the interrogatories. [Emphasis added.]

The "objection" to **USPS/PR-T1-2** simply cites to "Relevancy" with no attempt to explain how respective parts of the question, clearly about the Waters research, are somehow not relevant. As such, the Public Representative has waived its opportunity both to object and to respond to any motion to compel.

The objections nominally pertain only to parts (b) – (d), but part of question (a) is not answered and the response to part (e), simply points to the incomplete response to part (a) while completely dodging the unanswered portion of part (a) and what is asked in part (e). Accordingly, the motion to compel applies to the whole question. The interrogatory states, in full:

USPS/PR-T1-2. On what date were you contacted about the possibility of your providing testimony in this docket? Had there been any previous discussion about the potential for your testifying at some unknown point in the future? If so, please explain the context.

- a. By whom were you contacted? What goals for the research were discussed?
- b. Please describe how you arrived at the specific research design you used. What, if any, alternatives were considered and what factors led to the selection you finally made?
- c. How long did it take for your contract to be worked out? What details required the most attention to detail? When was it signed?
- d. How much time and effort did you put into the contract, including finalization of the testimony? (Please limit any quantified response to hours, leaving specific dollar amounts out.)
- e. Did you, whether with the assistance of the Public Representative or otherwise, consider other alternative methods for optimizing a retail network, or were you always focused on the one presented in your testimony? Please explain what alternatives, if any, that were considered and why they were or were not used.

The response provided to part (a) indicates the date on which contact was made by the Public Representative, presumably Ms. Tracy Ferguson. No response to the second element in part (a) is even attempted.

Part (b) reasonably inquires into the decision process by which an expert witness arrives at a decision to use a particular approach. This is a standard question posed in PRC proceedings. It ties directly to part (a), to which no

objection was lodged. The Postal Service is especially interested in the extent to which consideration was truly given to directing the attention of experts to the issues presented by this case, rather than to an off-the-shelf approach to studying RAOI (as this witness' approach seems to present).

Part (c) is also a customary and reasonable question, in both court and Commission proceedings, that seeks to identify approaches that were considered and either accepted or rejected. If no alternatives were considered, the witness is obliged to state as much; while if alternatives were considered, those must also be supplied.

Part (d) is again a quite common question in Commission proceedings. The time and effort should be consistent at some level with the level of work that was required. The analysis provided by the witness is quite basic, apparently without any consideration of issues actually presented by the Postal Service request. If minimal effort was required, we can be sure to accord the testimony appropriate weight. Since the witness claims (in response to USPS-PR-T1-1) that he would have preferred to expand his research to other geographic areas, a response to this question would provide some insight into what that effort might entail; this could then be evaluated by the Commission, Postal Service and others first when arguing the merits of this case and later when looking back to this docket to ascertain whether some additional approaches should be considered.

Further, the response to part (a) fails entirely to address the inquiry about research goals. Then the response to part (e), which directly addresses

“alternative methods for optimizing a retail network,” simply (or at least seems to) points to the response to (a), which is entirely nonresponsive also as to part (e).

These questions constitute a straightforward application of the Postal Service’s due process rights to inquire into the work of an expert witness; moreover, they are quite standard in Commission practice. The abject failure either to object or to respond should accordingly not be tolerated.

Finally, the response to USPS/PR-T1-3 agrees that “it [would] be fair to characterize your testimony as presenting an alternative method for optimizing the Postal Service’s retail network,” “is a fair characterization. So the PR itself agrees that these parts of questions USPS/PR-T1-2 are actually relevant.

The Postal Service also moves to compel a response to interrogatory USPS/PR-T1-6. The witness’ response simply states “The Public Representative objects to Interrogatory 6 in its entirety on the basis of relevancy.” It further claims that the witness’ personal purchasing habits are not relevant to his testimony. While that may be true at some level, the witness is testifying in a proceeding that centers on Retail Access Optimization, one in which the Postal Service seeks an advisory opinion, as the law requires. The entire premise of the case in changes in patterns of retail service access and the diminished use of traditional brick and mortar retail units operated by postal employees. Since the witness’ testimony pretends that such brick and mortar retail facilities constitute the complete and exclusive alternatives by which customers can access retail services, Dr. Waters’ testimony is entirely counter factual.

This question provides:

USPS/PR-T1-6

How often do you visit Post Offices (as that term is applied in the research reported in your testimony) for purposes of accessing postal services?

- a. What transactions are typical for you?
- b. How frequently do you visit Post Offices?
- c. Is the pattern of your visits one that invariably involves a trip from your home to the Post Office and directly back home again? Please explain whatever patterns you can see in your own behavior.
- d. Do you ever buy stamps in a pharmacy, grocery store, other retail location, or at an ATM? If so, with what frequency? In what form (roll, booklet, Forever Stamps)? Did you make a trip to that location from home? Did you buy anything else? Did you return directly home?
- e. Please answer these same questions in terms of others, if any, with whom you live.
- f. Is your residence in a rural location? What definition of "rural" are you applying in your response?

The question is relevant both to this docket and to his witness Waters' testimony. In a context where the witness' preparation for his testimony, his non-awareness of what RAOI is about or the evidence supporting, he suggests use of and then applies a particular set of tools. While his analysis may have some uses, it fails to understand the exact context in which RAOI exists; that starts from the Postal Service request, supported by a single piece of testimony, in which the Commission's advisory opinion regarding consonance of a particular initiative with the policies of title 39 has been requested. Witness Waters argues in favor of using a specific set of geographic tools for network optimization, one that does not even begin to encompass the basic reality that access to postal services is no longer tied exclusively to brick-and-mortar visits. The witness' fundamental misconception of this case could derive from conversations with counsel, his own reading, or his own experience. This question attempts to

ascertain whether his own experience contributes to his misconception. As such it is plainly relevant to issues of this case as well as his capacity to testify as an informed, expert witness.

If the Public Representative is prepared to stipulate that Dr. Waters has no knowledge of the context of this docket, that he has not read the testimony or Request, such that his testimony in no way bears upon issues raised directly by the case, the Postal Service is prepared to accept that stipulation in lieu of a response to this question. Dr. Waters already agrees in his response to USPS/PR-T1-3 that his testimony can fairly be characterized as “presenting an alternative method for optimizing the Postal Service’s retail network.” Hence it appears that the Public Representative is prepared to make this stipulation.

Similar to the strategy adopted by the Public Representative for witness Waters, PR-T-1, witness Klingenberg also embeds an objection into his response to interrogatory USPS/PR-T2-6. This interrogatory observes that Graphic 1 in the latter’s testimony is overtly misleading, because areas constituting an overlap of two surrounding areas are rendered in the color of one of them, rather than, as is customary, in a third color. Graphic 1 shows both all Post Offices, and RAOI nominees, with the latter being approximately 10 percent of the former. Since the latter are also printed in a darker color that completely obscures the former, the net effect is to emphasize the latter unduly over the former, with the picture appearing to show that perhaps a quarter of the eastern half of the contiguous United States consisting of Post Offices nominated for discontinuance studies.

Interrogatory USPS/PR-T2-6, together with the current response, states:¹

USPS/PR-T2-6. Graphic 1, a map of the United States with all Postal Service offices, is overtly misleading because the RAOI offices are dark solid red with black outline and the open offices are very light blue with blue outline; one consequence is that the reds are always on top of the blues. Please produce a new variant of Graphic 1 that uses, and shows in its legend, three colors for the two underlying data types plus the intersection.

Response. The Public Representative disagrees with the Postal Service's characterization of Graphic 1 and objects to the request to re-construct the graphic, as to do so is unduly burdensome and the Postal Service has dominion and control over the information it is seeking to have re-illustrated. To take from the Postal Service's response to DBP/USPS-36, the need to reconfigure the graphic is unnecessary as reasonable readers of Mr. Klingenberg's testimony and observers of Graphic 1 can see color distinctions and overlaps, and understand that they represent the different status of the offices

This response does not constitute a proper objection both because it is not in the form of an objection, but also because it fails to satisfy the content restrictions of Rule 26(e) emboldened in the copy of the Rule above. Yet in any event, any claim of undue burden is ridiculous on its face. If witness Klingenberg could undertake the effort to create the plainly misleading Graphic 1, the least he can do is be compelled to provide a more objective version, as this interrogatory requests. The Postal Service will take up the comparison witness Klingenberg

¹ Formatting has been converted to PRC standards from the original.

makes between this interrogatory and his response to USPS/PR-T2-6 on oral cross-examination to further illustrate how groundless this objection is.

Both the administrative and evidentiary records would be improved by granting the instant motion to compel.

Respectfully submitted,

UNITED STATES POSTAL SERVICE

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